

United States Department of the Interior Bureau of Land Management

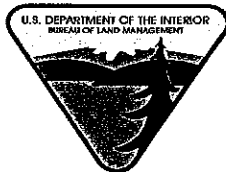
Decision Record
Environmental Assessment
UT- DOI-BLM-UT- GO23-2012-0018-EA

February 2013

Deer Creek-Upper Cottonwood Two Lease Modifications To Federal Coal leases UTU-06039 and UTU-88554 Emery County, UT

Location:

*T. 16 S., R. 6 E., Sections 22, 23, 24, 25, 26 & 27
Salt Lake Meridian, Emery County, Utah*



U.S. Department of the Interior
Bureau of Land Management
Price Field Office
125 South 600 West
Price, Utah 84501



U.S. Department of Agriculture-Forest Service
Manti-La Sal National Forest
Ferron-Price Ranger District
599 West Price River Drive
Price, Utah 84501



U.S. Department of Interior
Office of Surface Mining Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, Colorado 80202

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Deer Creek-Upper Cottonwood Lease Modifications

INTRODUCTION

In accordance with federal regulations at 43 CFR 3432, PacifiCorp applied to the Bureau of Land Management Utah State Office for federal coal lease modifications to expand the existing Deer Creek Mine in order to continue its current level of coal production for approximately three additional years.

The Mill Fork South Tract and Mill Fork Southeast Tract proposed lease modifications would add 860 acres of un-leased federal subsurface coal to Federal Coal Lease UTU-88554 and 320 acres of un-leased federal subsurface coal to Federal Coal Lease UTU-06039.

Coal from the existing leases is mined from the PacifiCorp-owned Deer Creek Mine. The lease modification application was made to prevent bypass of federal coal reserves both within the existing lease and the proposed lease modifications and to extend the life of the mine.

As required by the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR 1500, an environmental assessment (DOI-BLM-UT-GO23-018) (EA) was prepared by the Manti-La Sal National Forest (MLNF), the Price Field Office Bureau of Land Management (BLM) and the Office of Surface Mining, Reclamation and Enforcement (OSM) that disclosed the potential effects of the Proposed Action (proposed coal lease modifications) and the No Action Alternative (no lease modifications).

The EA specifically evaluates the effects of modifying the leases and potential consequences of subsequent mining of subsidence and identifying any surface resources requiring site-specific protection from surface subsidence of the lands.

The two lease modifications are located about 15 miles northwest of Orangeville, Utah in T. 16 S., R. 6 E., Sections 22, 23, 24, 25, 26 and 27, Salt Lake Meridian.

The coal resource is situated underground and is managed by the BLM. The surface lands are managed by the MLNF.

REGULATORY FRAMEWORK

The 1920 Mineral leasing Act authorized the Secretary of the Interior to lease deposits of coal on lands owned by the United States, including National Forest System lands (NFS). The Federal Coal Leasing Amendments Act of 1976 amended the 1920 Mineral leasing Act giving agencies with surface land jurisdiction:

- 1) Consent authority for leasing NFS lands reserved from the public domain; and
- 2) Authority to prescribe conditions for the "use and protection of the non-mineral interests in the lands subject to leasing."

The 1977 Surface Mining Control and Reclamation Act (SMCRA) established a program for safety, environmental permitting and management of surface coal mining operations and provided for the cooperation between the Secretary of the Interior and the States with respect to coal mining operations. SMCRA also established the Office of Surface Mining Reclamation and Enforcement to administer the program.

PLAN CONFORMANCE

The Proposed Action is in conformance with the Price Field Office Record of Decision and Approved Resource Management Plan (Approved RMP) approved October 31, 2008. The objective on page 123 states: "Maintain coal leasing, exploration, and development within the planning area while minimizing impacts to other resource values." Federal coal included in the Proposed Action falls within an area identified as "Coal Available for Further Consideration for Leasing subject to constraints of the Forest Service" (BLM 2008).

ENVIRONMENTAL ANALYSIS

Issues were identified by the BLM interdisciplinary team and through public involvement.

Alternatives analyzed in the EA include the Proposed Action (with environmental protection measures incorporated into the project design) and the No Action (No Leasing Modification) Alternative.

During the environmental analysis, it was identified that groundwater resources would be intercepted during mining operations; however, dewatering of this inactive zone perched groundwater should not result in decreases to water quality and quantity in overlying active zone groundwater systems.

It was also determined that negligible to no impacts to springs and seep discharge rates in the lease modification areas would result from shallow subsidence cracking.

Lease stipulations (Appendix A in the EA) are being prescribed for conformance with all laws, rules and regulations, cultural and paleontological resources; endangered or threatened species; water depletions, geologic hazards, baseline studies, monitoring requirements, riparian, wetland or floodplain, subsidence, roadless and visuals, wildlife, surface resources and dust control.

DECISION

After carefully reviewing the facts and analysis contained in environmental assessment DOI-BLM-UT-GO23-2012-0018-EA, it is my decision to grant approval to the proposed lease modifications for the Deer Creek-Upper Cottonwood Project (UTU-88554 and UTU-06039).

I have determined that granting approval to modify the leases is in the public interest.

The modifications include an additional 320 acres for lease UTU-06039 and 860 acres to lease UTU-88554 for a total of 1,180 acres of unleased federal lands.

These leasing modifications do not authorize physical coal mining operations but provides development opportunities for mineable federal coal reserves within the Mill Fork Federal Coal Lease South Tract that are environmentally sound and is consistent with applicable laws and regulations, as authorized by the Mineral leasing Act of 1920, as amended.

The following stipulations have been developed by the BLM and the Forest Service interdisciplinary team to mitigate adverse effects which may result from authorizing these lease modifications. The lease stipulations, which have been adopted, are the mitigation measures identified to protect non-mineral, surface resources.

This decision is contingent upon meeting all stipulations and monitoring requirements listed in Appendix A of the EA titled: **East Mountain Standard Stipulations for Lease Modifications and Lease Readjustments.**

EAST MOUNTAIN STANDARD STIPULATIONS FOR LEASE MODIFICATIONS AND LEASE READJUSTMENTS

1. Conformance with OSM Laws — In accordance with Sec.523 (b) of the "Surface Mining Control and Reclamation Act of 1977", surface mining and reclamation operations conducted on this lease are to conform with the requirements of this Act and are subject to compliance with Office of Surface Mining regulations, or as applicable the Utah program approved under cooperative agreement in accordance with Sec. 523 (c). The United States Government does not warrant that the entire tract will be susceptible to mining.

2. Cultural and Paleontological Resources — Before undertaking activities that may disturb the surface of previously undisturbed leased lands, the Lessee may be required to conduct a cultural resource inventory and a paleontological appraisal of the areas to be disturbed.

These studies shall be conducted by qualified professional cultural resource specialists or qualified paleontologists, as appropriate, and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified cultural or paleontological resources.

If cultural resources or paleontological remains (fossils) of significant scientific interest are discovered during operations under this lease, the Lessee prior to disturbance shall immediately bring them to the attention of the appropriate authorities. Paleontological remains of significant scientific interest do not include leaves, ferns or dinosaur tracks commonly encountered during underground mining operations.

The cost of conducting the inventory, preparing reports, and carrying out mitigating measures shall be borne by the Lessee.

3. Threatened, Endangered Species and Migratory Birds — If there is reason to believe that Threatened or Endangered (T&E) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the Lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance.

The cost of conducting the inventory, preparing reports and carrying out mitigating measures shall be borne by the Lessee.

4. Baseline Resource Data — The lessee shall be required to perform a study to secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area.

Existing data may be used if such data are adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the interrelationship of the geology, topography, surface and ground water hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

5. Powerline Location and Large Bird Protection — Powerlines used in conjunction with the mining of coal from this lease shall be constructed so as to provide adequate protection for raptors and other large birds. When feasible, powerlines will be located at least 100 yards from public roads.

6. Mine Site Location and Development — The limited area available for mine facilities at the coal outcrop, steep topography, adverse winter weather, and physical limitations on the size and design of access roads, are factors which will determine the ultimate size of the surface area utilized for the mine. A site-specific environmental analysis will be prepared for each new mine site development and for major modifications to existing developments to examine alternatives and mitigate conflicts.

7. Visual Resource Protection — Consideration will be given to site selection to reduce adverse visual impacts. Where alternative sites are available, and each alternative is technically feasible, the alternative involving the least damage to the scenery and other resources shall be selected. Permanent structures and facilities will be designed and screening techniques employed, to reduce visual impacts, and where possible, achieve a final landscape compatible with the natural surroundings. The creation of unusual, objectionable, or unnatural landforms and vegetative landscape features will be avoided.

8. Monitoring — The Lessee shall be required to establish a monitoring system to locate, measure, and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data.

9. Dust Control — The Lessee shall provide for the suppression and control of fugitive dust on haul roads and at coal handling and storage facilities. On Forest Development roads (FDR), Lessees may perform their share of road maintenance by a commensurate share agreement if a significant degree of traffic is generated that is not related to their activities.

10. Subsidence — Except at locations specifically approved by the Authorized Officer, with concurrence of the Forest Service, underground mining operations shall be conducted in a manner so as to prevent surface subsidence that would: (1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, (2) cause damage to existing surface structures, and (3) damage or alter the flow of perennial streams. The Lessee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.

11. Surface Breakouts — In order to avoid surface disturbance on steep canyon slopes and to preclude the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specifically approved locations.

12. Timber Removal — If removal of timber is required for clearing of construction sites, etc., such timber shall be removed in accordance with the regulations of the surface management agency.

13. Underground Mining — The coal contained within, and authorized for mining under this lease, shall be extracted only by underground mining methods.

14. Surface Improvement Protection — Existing Forest Service owned or permitted surface improvements will need to be protected, restored, or replaced to provide for the continuance of current land uses.

15. Wildlife Area Protection — In order to protect big-game wintering areas, elk calving and deer fawning areas, sage grouse strutting areas, and other critical wildlife habitat and/or activities, specific surface uses outside the mine development area may be curtailed during specified periods of the year.

16. Timely Facility Removal — Support facilities, structures, equipment, and similar developments will be removed from the lease area within two years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the lease form is applicable. Disturbed areas and those areas previously occupied by such facilities will be stabilized and rehabilitated, drainages re-established, and the areas returned to an acceptable post-mining land use.

17. Replacement of Land Survey Markers — The Lessee, at the conclusion of the mining operation, or at other times as surface disturbance related to mining may occur, will replace all damaged, disturbed or displaced corner monuments (section corners, quarter corners, etc.), their accessories and appendages (witness trees, bearing trees, etc.), or restore them to their original condition and location, or at other locations that meet the requirements of the rectangular surveying system. This work shall be conducted at the expense of the Lessee, by the BLM, to the standards and guidelines found in the Manual of Surveying Instructions, United States Department of the Interior.

18. Replacement of Affected Surface Water — The Lessee, at its expense, will be responsible to replace any surface and/or developed ground water sources identified for protection, that may be lost or adversely affected by mining operations, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, fishery habitat, livestock and wildlife use, or other land uses (authorized by 36 CFR 251).

19. Compliance with USDA Rules — The Licensee/Permittee/Lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the license/permit/lease.

The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of Interior, (2) uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by the Secretary of Interior, and (3) use and occupancy of the NFS not authorized by a permit/operation plan approved by the Secretary of Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor
Manti-La Sal National Forest
599 West Price River Drive
Price, Utah 84501
Telephone No.: 435-637-2817

who is the authorized representative of the Secretary of Agriculture.

20. Recoverable Coal — Notwithstanding the approval of a resource recovery and protection plan by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery [as defined at 43 CFR §3480.0-5(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operation, the operator shall submit appropriate justification to obtain approval by the Authorized Officer (AO) to leave such reserves unmined. Upon approval by the AO, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the AO determines that the R2P2 modification will not attain MER resulting from changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a new R2P2 modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unminable or at such time that the Lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the ONRR demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

21. Waste Certification — The Lessee shall provide upon abandonment and/or sealing off a mined area and prior to lease termination/relinquishment, certification to the lessor that, based upon a complete search of all the operators records for the mine and upon their knowledge of past operations, there has been no hazardous substances per (40 CFR 302.4) or used oil as per Utah State Management Rule R-3 15-15, deposited within the lease, either on the surface or underground, or that all remedial action necessary has been taken to protect human health and the environment with respect to any such substances remaining on the property. The back-up documentation to be provided shall be described by the lessor prior to the first certification and shall include all documentation applicable to the Emergency Planning and Community Right-to-know Act (EPCRA, Public Law 99-499), Title III of the Superfund Amendments and Reauthorization Act of 1986 or equivalent.

22. Abandonment of Equipment — The lessee/operator is responsible for compliance with reporting regarding toxic and hazardous material and substances under Federal Law and all associated amendments and regulations for the handling of such materials on the land surface and in underground mine workings.

The lessee/operator must remove mine equipment and materials not needed for continued operations, roof support and mine safety from underground workings prior to abandonment of mine sections. Exceptions can be approved by the Authorized Officer (BLM) in consultation with the surface management agency. Creation of a situation that would prevent removal of such material and by retreat or abandonment of

mine sections without prior authorization would be considered a noncompliance with lease terms and conditions and subject to appropriate penalties under the lease.

23. Underground Inspection — All safe and accessible areas shall be inspected prior to being sealed. The lessee shall notify the Authorized Officer in writing 30 days prior to the sealing of any areas in the mine and state the reason for closure. Prior to seals being put into place, the lessee shall inspect the area and document any equipment machinery, hazardous substances, and used oil that is to be left underground.

The purpose of this inspection will be: (1) to provide documentation for compliance with 42 U.S.C. 9620 section 120(h) and State Management Rule R-3 15-15, and to assure that certification will be meaningful at the time of lease relinquishment, (2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left underground. In addition, these items will be photographed at the lessee's expense and shall be submitted to the Authorized Officer as part of the certification. The abandonment of any equipment/machinery shall be on a case by case basis and shall not be accomplished unless the Authorized Officer has granted a written approval.

The FS and BLM agreed that the stipulations found in **Appendix A** will be applied to the proposed lease modification areas with the following clarifications:

- Stipulation 4 - Baseline Resource Data – As required by Stipulation 4 and as part of the UDOGM permitting process subsequent to FS concurrence and BLM issuance of modification to these leases, the applicant for the modifications has agreed that hydrological monitoring of springs, seeps, creeks, and potentially impacted water supply wells would be performed during the pre-mine and operational phases of the mine and continue through the remainder of the permit term. A detailed list of required monitoring locations, flow measurements, field and laboratory analysis requirements, and potential mitigation measures would be included in the PAP to be developed in coordination with UDOGM.
- Stipulation 10 - Subsidence – This stipulation provides for the protection of surface facilities from subsidence. Two existing surface facilities, a natural gas flowline owned by Merit Management Partners I, LP & Merit Energy Partners III, LP (Merit) and an electrical transmission line, owned by PacifiCorp, are located in the proposed lease modification area UTU-88554. Compliance with Stipulation 10 requires the protection or mitigation of these facilities from subsidence and other mining effects.
- Stipulation 19 – Compliance with USDA regulations. This stipulation would prevent road construction and timber harvest in the East Mountain IRA which is found in both UTU-88554 and UTU-06039 pursuant to rules and regulations of the Secretary of Agriculture pertaining to IRA management at 36 CFR 294.

Protest/Appeal Language:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.



BLM Authorized Officer



Date